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713.01

MANUAL OF PATENT EXAMINING PROCEDURE

PTOL-413A (05-04)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Applicant Initiated Interview Request Form					
Application No.: <u>09/483,164</u>	First Named Applicant: <u>Daniel Thomsen</u>				
Examiner: <u>Michael Simitaski</u>	Art Unit: <u>2134</u>	Status of Application: <u>pending</u>			
Tentative Participants: (1) <u>Michael Simitaski</u> (2) <u>Jacques Louis-Jacques</u> (3) <u>Paul Urbanski</u> (4) <u>Tom Brennan</u>					
Proposed Date of Interview: <u>12/17/2006 or 12/18/2006</u>			Proposed Time: <u>11:00 (AM/PM)</u>		
Type of Interview Requested: (1) <input checked="" type="checkbox"/> Telephonic (2) <input type="checkbox"/> Personal (3) <input type="checkbox"/> Video Conference					
Exhibit To Be Shown or Demonstrated: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, provide brief description:					
Issues To Be Discussed					
Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>102(a)</u>	<u>1-35</u>	<u>Thomsen 1</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>102(a)</u>	<u>1-35</u>	<u>Thomsen 2</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
[] Continuation Sheet Attached					
Brief Description of Arguments to be Presented: <u>See enclosed Addendum</u>					
<p>An interview was conducted on the above-identified application on _____</p> <p>NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).</p> <p>This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.</p>					
Applicant/Applicant's Representative Signature			Examiner/SPE Signature		
Typed/Printed Name of Applicant or Representative					
Registration Number, if applicable					

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Examiner Interview Request Addendum

Brief Description of Arguments to be Presented

The Requested Interview concerns Paragraph 6 of the Office Action dated 9/13/2006:

In Part (a), the Examiner states that the petition regarding contacting Jessica Bogle is insufficient.

SLWK received notice that the petition was granted by Paul Shanowski, Senior Attorney of the Office of Petitions of the USPTO. The notice stated that the declaration of facts under 37 C.F.R. § 1.131 will be entered without the signature of Ms. Bogle.

In Part (b), the Examiner states the Office needs to know the contribution of the fourth inventor who is not included as an author on the Thomsen article and a description of the claimed subject matter to which the fourth inventor contributed.

The Office received signed statements from all four inventors that they are co-inventors. The Office received declarations that the date of invention was prior to the date of the Thomsen publication and that any disclosure of subject matter in the Thomsen article was provided from the work of the inventors. Therefore, the declaration is sufficient to remove the rejection under 102(a) because

- i) the invention was not described in the Thomsen article before the invention by the Applicants, and
- ii) any disclosure in the Thomsen article was the Applicants' own invention.

In Part (c), the Examiner requires evidence declaring what parts of the Thomsen article (hereinafter "the Napolean article to avoid confusion") were invented prior to October 1999 and to what claims the subject matter applies. The Examiner also requires a showing of what time period the reduction to practice occurred and must show diligence between conception and reduction to practice.

The Office received signed statements from all four inventors that they are co-inventors. The Office received declarations that the date of invention was prior to the date of the Napolean article publication and that any disclosure of subject matter in the Napolean article was provided from the work of the inventors.

Therefore, the declaration is sufficient to remove the rejection under 102(a) because

- iii) the invention was not described in the Napolean article before the invention by the Applicants, and
- iv) any disclosure in the Napolean article was the Applicants' own invention.

The declaration under §1.131 states that the subject matter claimed in the Application was invented prior to the publication earliest of the Thomsen articles. Under §1.131, Applicant is required to make a declaration concerning the date of the invention. Applicant is not required to make a statement regarding the invention date of the subject matter in a cited reference.

The declaration states any disclosure of the claimed subject matter in the articles was provided from work of the inventors. Therefore, conception and reduction to practice to show invention prior to the invention of another is not relevant.